

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Western Tradition)	AND
Partnership and Coalition for)	STATEMENT OF FINDINGS
Energy and the Environment)	

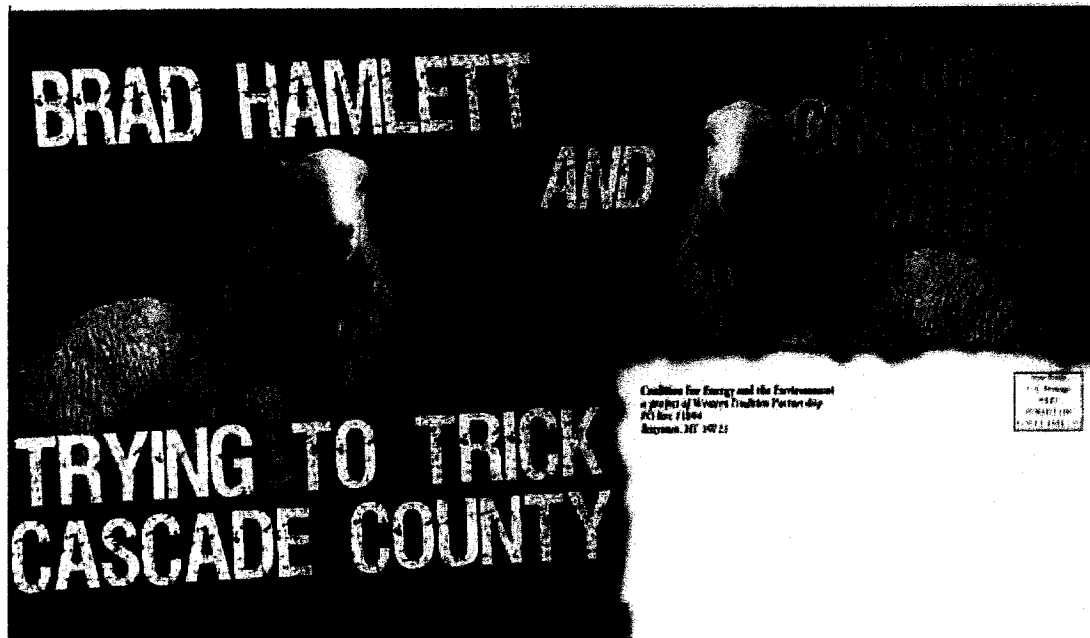
Benjamin R. Graybill filed complaints against Western Tradition Partnership (WTP) and the Coalition for Energy and the Environment (CEE), alleging that a flyer produced and distributed by one or both of the groups failed to include proper "paid for by. . ." attribution language, in violation of Montana campaign finance and practices laws. The complaint against WTP also alleges that the person responsible for the flyer failed to provide public disclosure by registering and filing campaign finance reports with the office of the Commissioner of Political Practices (CPP).

SUMMARY OF FACTS

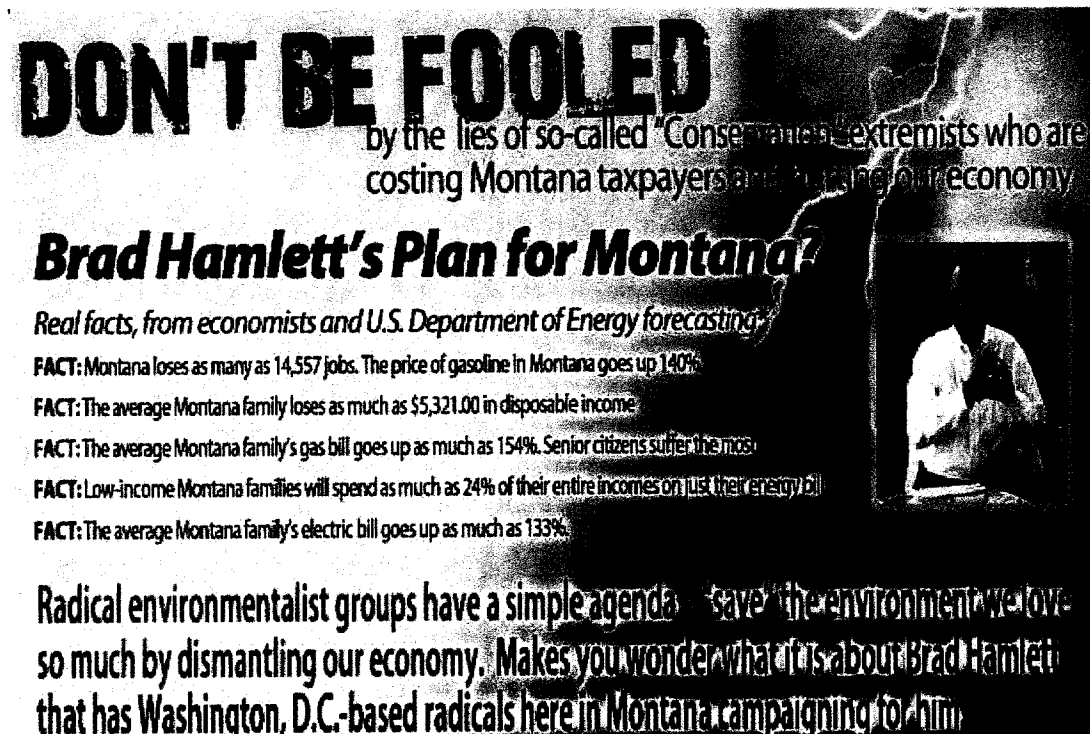
1. Brad Hamlett was a candidate for Senate District 10 in 2008, running as a Democrat. He defeated his opponent in the election, Republican Jim Whitaker.
2. Graybill filed a complaint in October 2008, attaching the flyer reproduced on the following page, which he alleged was not in compliance with § 13-35-225(1), MCA.
3. § 13-35-225(1), MCA requires identification of the person who paid for campaign materials. In the case of a political committee, the attribution must include the language "paid for by" and disclose the name of the committee treasurer. Graybill's complaint alleges that the attribution language on the Hamlett flyer is deficient in both respects – it fails to include "paid for by" language and fails to identify the treasurer.

Brad Hamlett Flyer (Exhibit 1; reduced to fit)

Front



Back



4. The front page of the flyer states: "Coalition for Energy and the Environment, a project of Western Tradition Partnership," and includes an address with a post office box in Bozeman, Montana.
5. On November 10, 2008, CPP received the following letter from CEE, signed by Brian Witt, CEE's Treasurer: (Exhibit 2)

Coalition for Energy and the Environment

November 6, 2008

Dear Political Practices,

Because of a several printing mistakes, we are submitting the following corrections:

1. The "Paid for by" portions of the "Doc Woerner Tax", Perry Miller Tax, and Dennis Getz Tax mailers were left off along with the name of the treasurer. It should read "Paid for by Coalition for Energy and the Environment."
2. The "Paid for by" and treasurer name was left off of the Brud Hamlett/MCV mailer. It should read "Paid for by Coalition for Energy and the Environment, Brian Witt, Treasurer."
3. The words "Paid for by" are missing from the Holm/MCV, Beck/MCV, Hiner/Tax, McChesney/Environment, Grinde/Environment, Clark/Environment, and Steenson/MCV mailers. It should read "Paid for by Coalition for Energy and the Environment."
4. The words "Paid for by" were left off of the Moss/Environment mailer. It should read "Paid for by Coalition for Energy and the Environment." In addition, the wording on the back should read "Voting to hike taxes and fees by \$1.2 billion, strangling Montana's small business, HB 2, 2007 Special Session." The words "Special Session" were accidentally omitted.

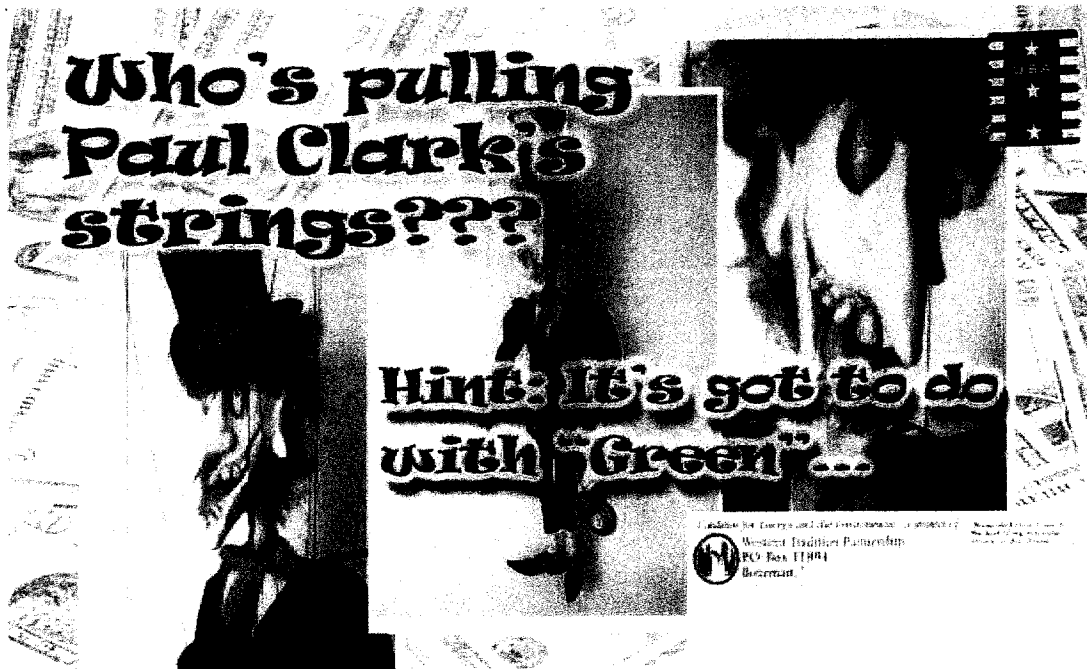
Thank you,


Brian Witt

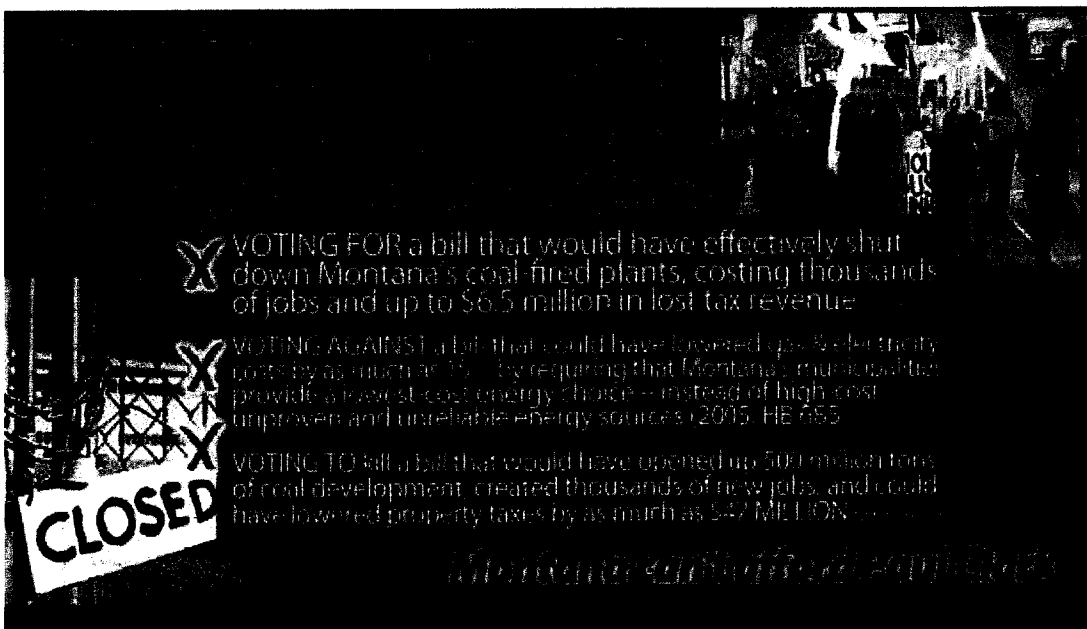
6. CEE provided CPP copies of other flyers that were distributed during the 2008 campaign year. They are reduced (from the original 5.75" x 10.75") and reproduced on the following pages.

Paul Clark Flyer (Exhibit 3)

Front



Back

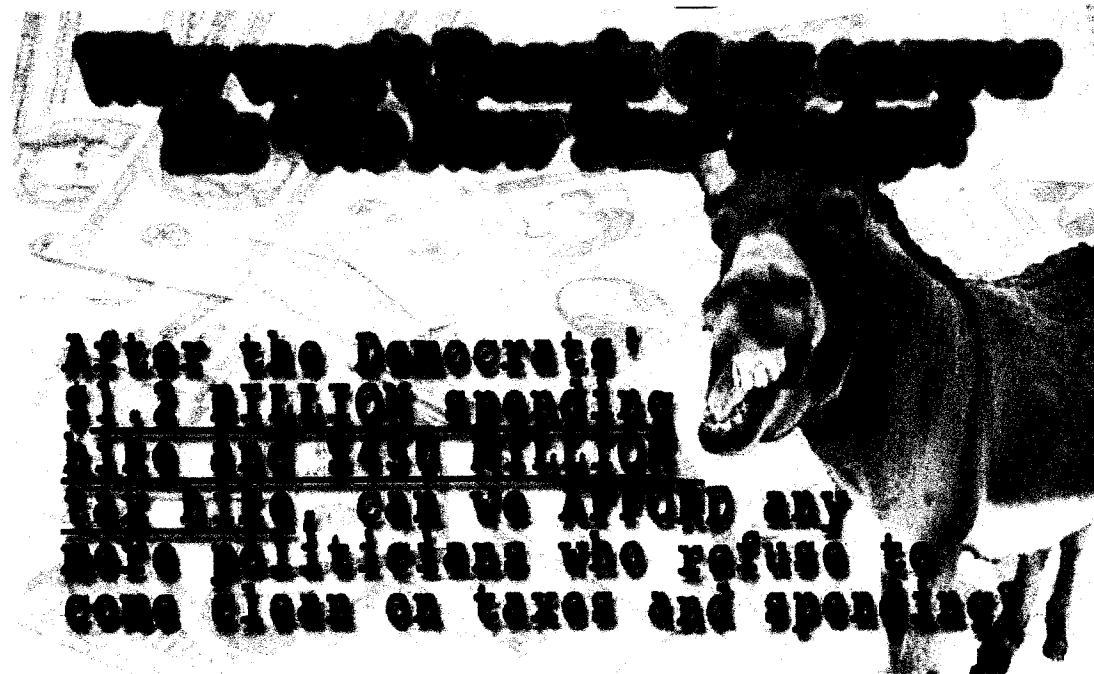


Dennis Getz Flyer (Exhibit 4)

Front



Back

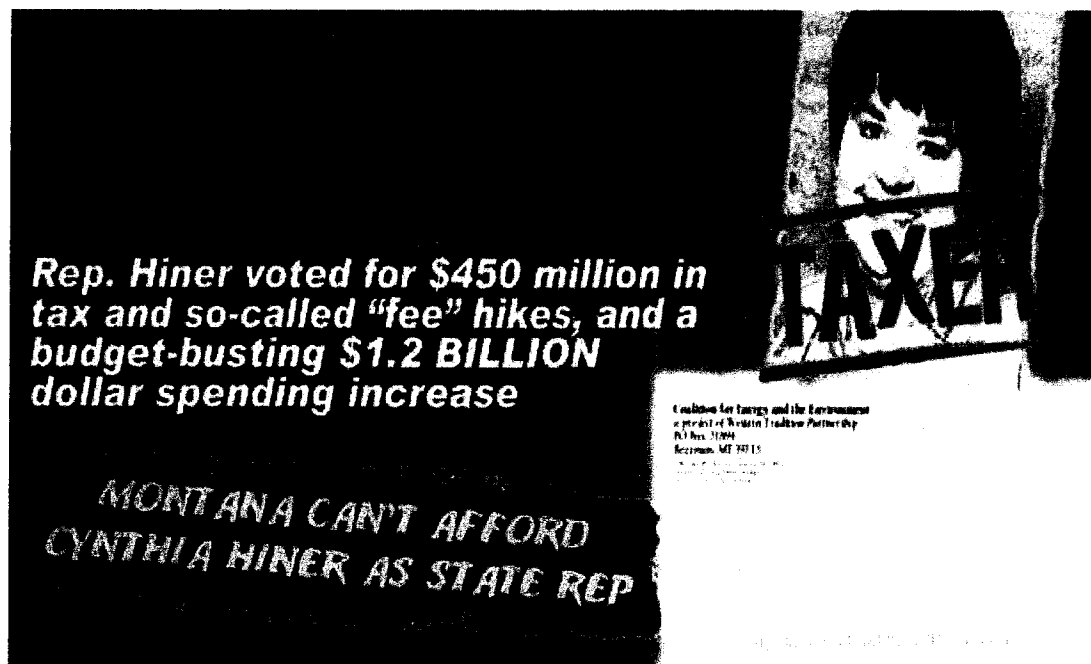


Cynthia Hiner Flyer (Exhibit 5)

Front

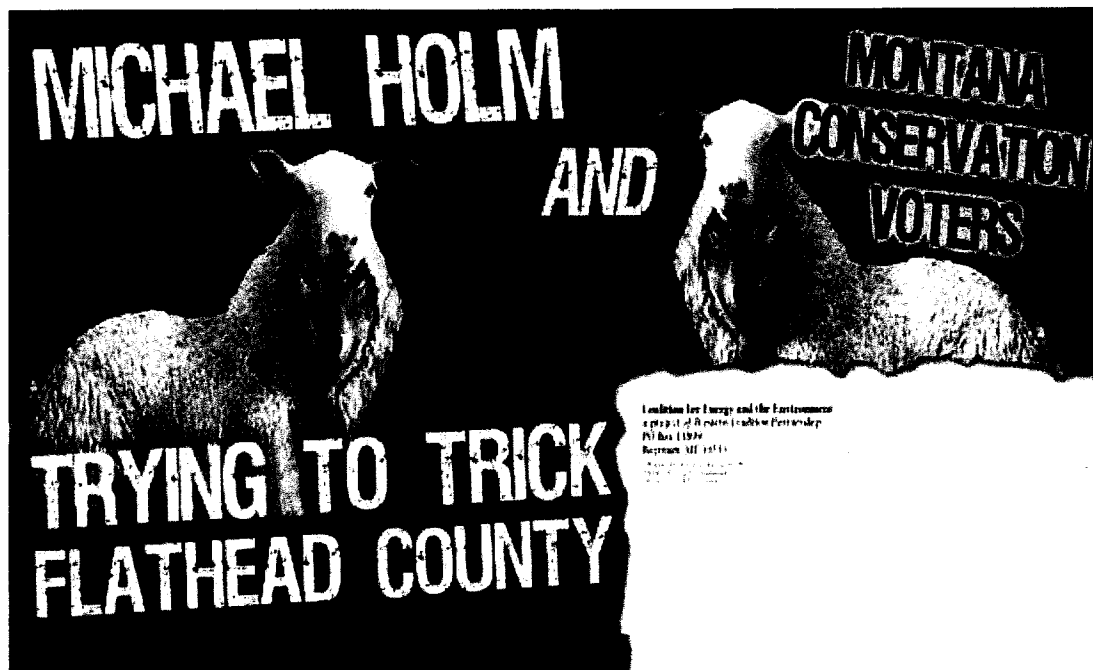


Back



Michael Holm Flyer (Exhibit 6)

Front



Back

DON'T BE FOOLED
by the lies of so-called "Conservation" extremists who are costing Montana taxpayers and hurting our economy

Michael Holm's Plan for Montana?

Real facts, from economists and U.S. Department of Energy on radical "green" proposed legislation

FACT: Montana loses as many as 14,557 jobs. The price of gasoline in Montana goes up 140%


FACT: The average Montana family loses as much as \$5,321.00 in disposable income

FACT: The average Montana family's gas bill goes up as much as 154%. SENIORS suffer the most!

FACT: Low-income Montana families will spend up to 24% of total income on just their energy bill!

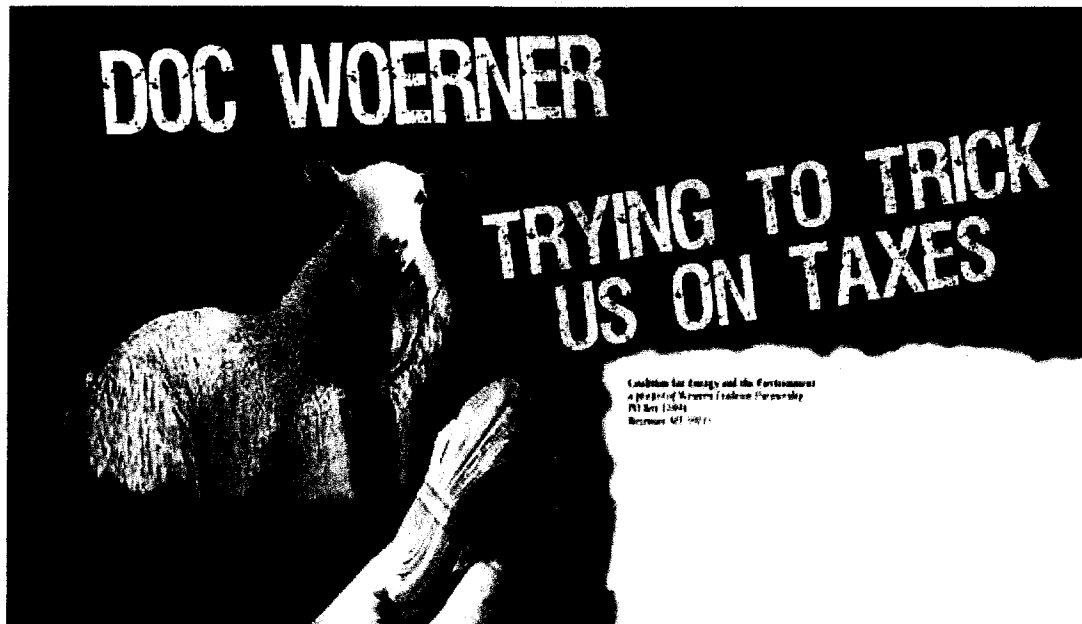
FACT: The average Montana family's electric bill goes up as much as 133%.

Radical environmentalist groups have a simple agenda - dismantle our economy by shutting down responsible timber and energy production. Makes you wonder what it is about Michael Holm that has Washington, D.C.-based radicals here in Montana campaigning for him.

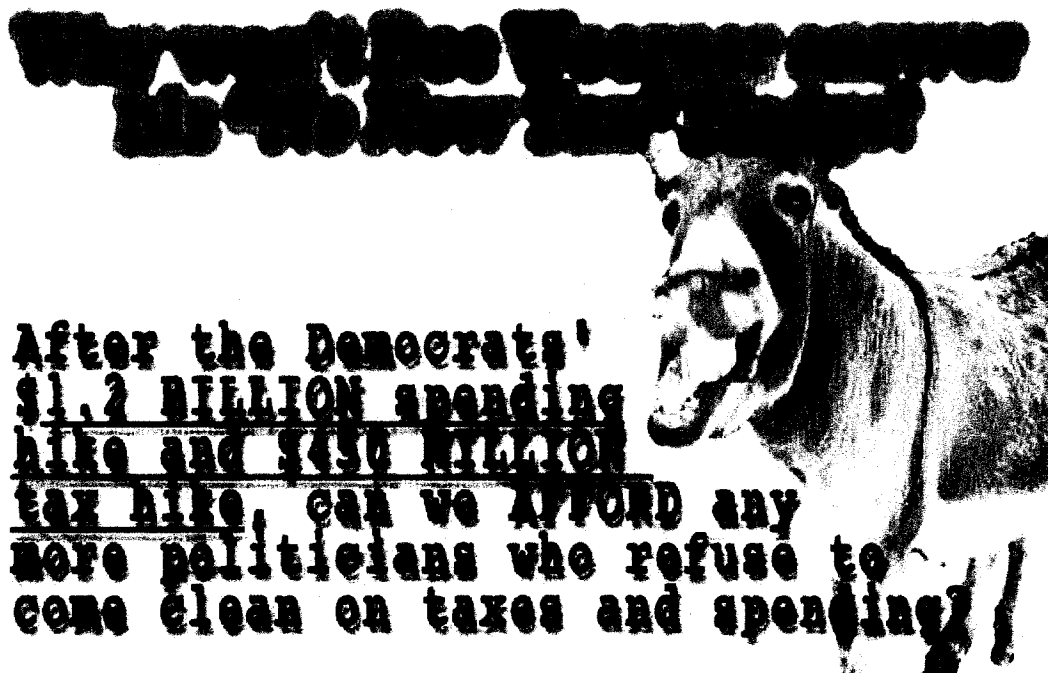


Doc Woerner Flyer (Exhibit 7)

Front

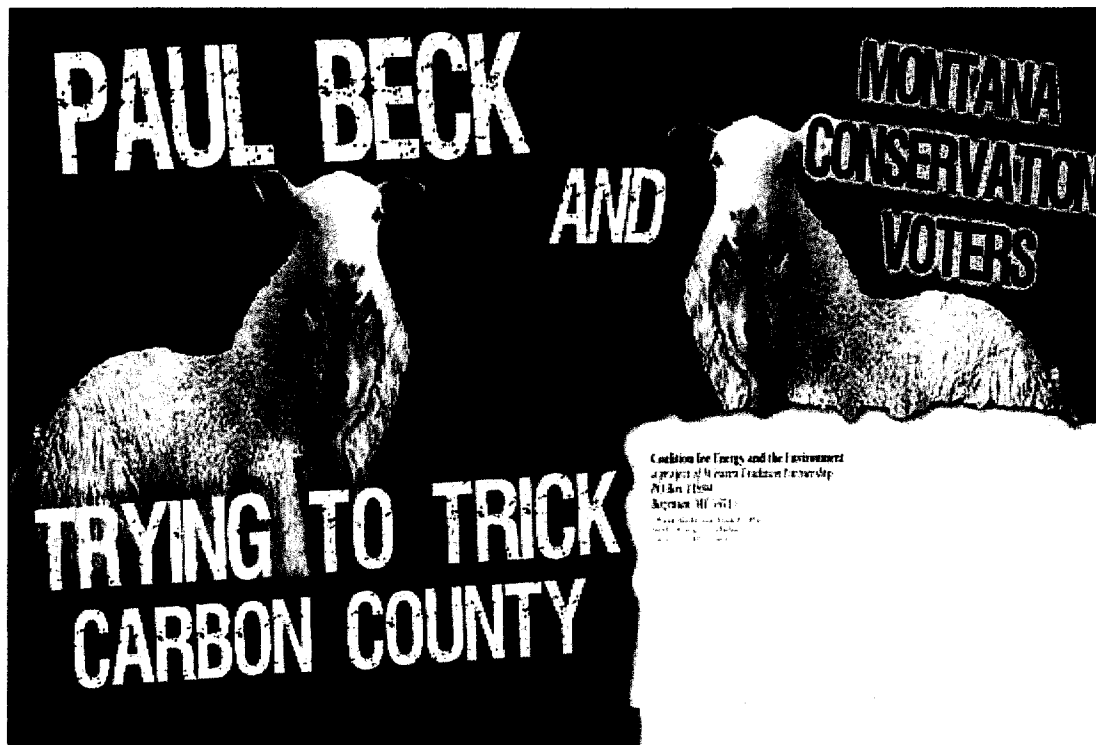


Back



Paul Beck Flyer (Exhibit 8)

Front



Back

DON'T BE FOOLED
by the lies of so-called "Conservation" extremists who are costing Montana taxpayers and hurting our economy

Paul Beck's Plan for Montana?

Real facts, from economists and U.S. Department of Energy on radical "green" proposed legislation

FACT: Montana loses as many as 14,557 jobs. The price of gasoline in Montana goes up 140%


FACT: The average Montana family loses as much as \$5,321.00 in disposable income

FACT: The average Montana family's gas bill goes up as much as 154%. SENIORS suffer the most!

FACT: Low-income Montana families will spend up to 24% of total income on just their energy bill

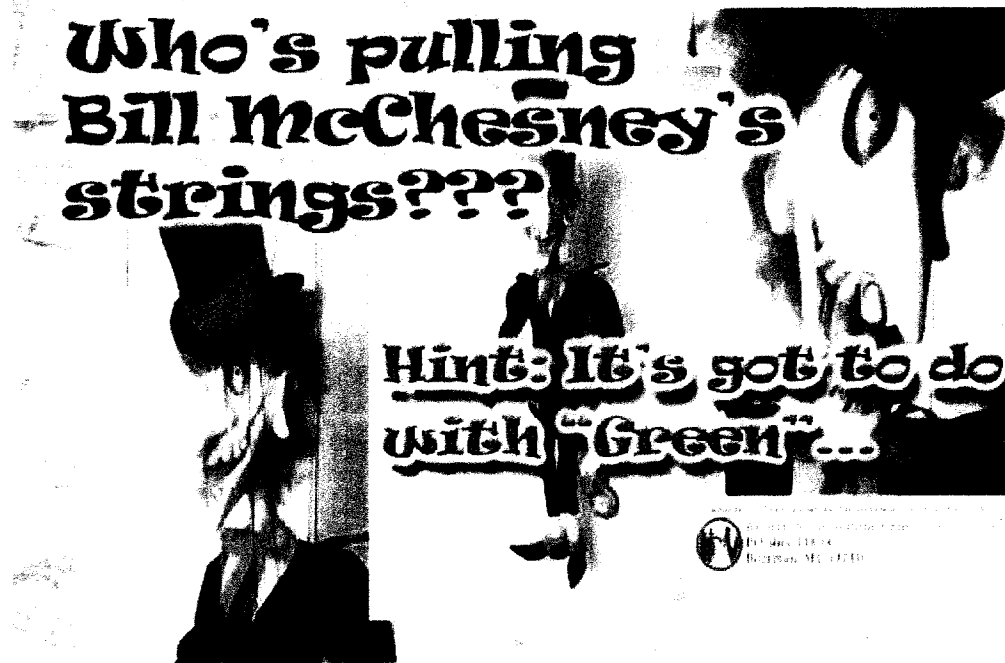
FACT: The average Montana family's electric bill goes up as much as 133%.

Radical environmentalist groups have a simple agenda - dismantle our economy by shutting down responsible timber and energy production. Makes you wonder what it is about Paul Beck that has Washington, D.C.-based radicals here in Montana campaigning for him.

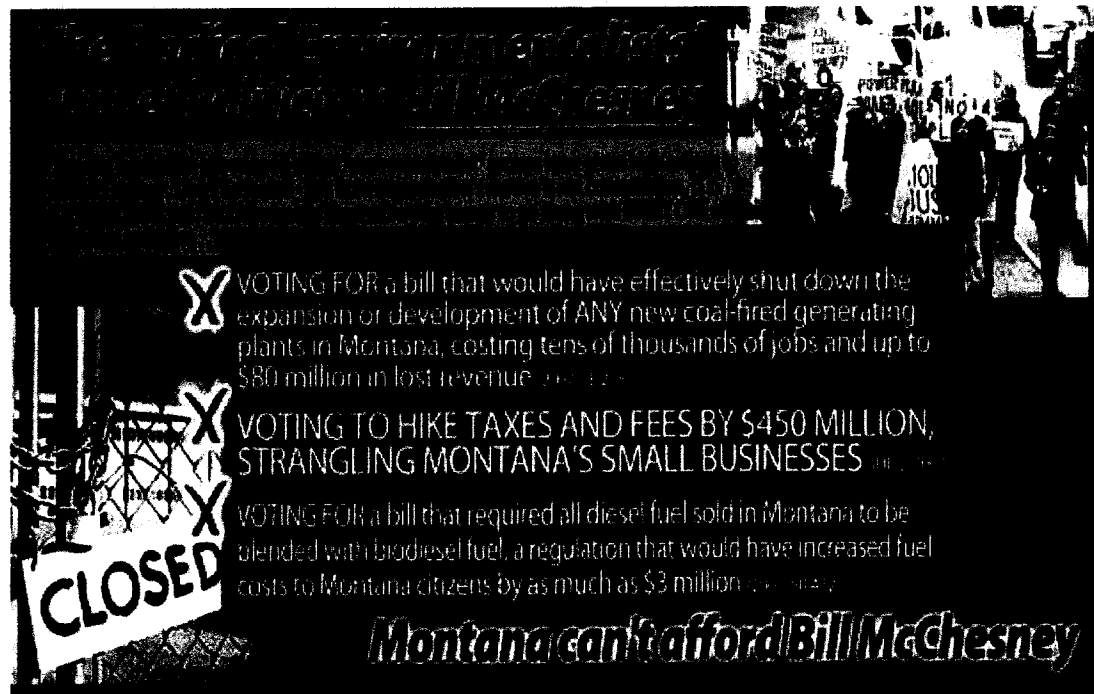


Bill McChesney Flyer (Exhibit 9)

Front

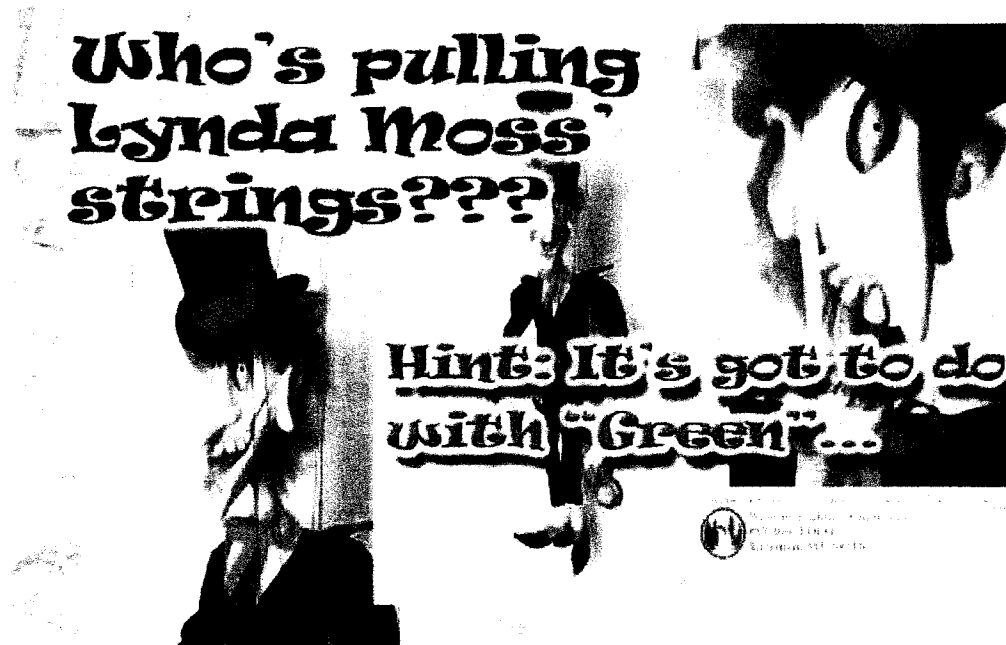


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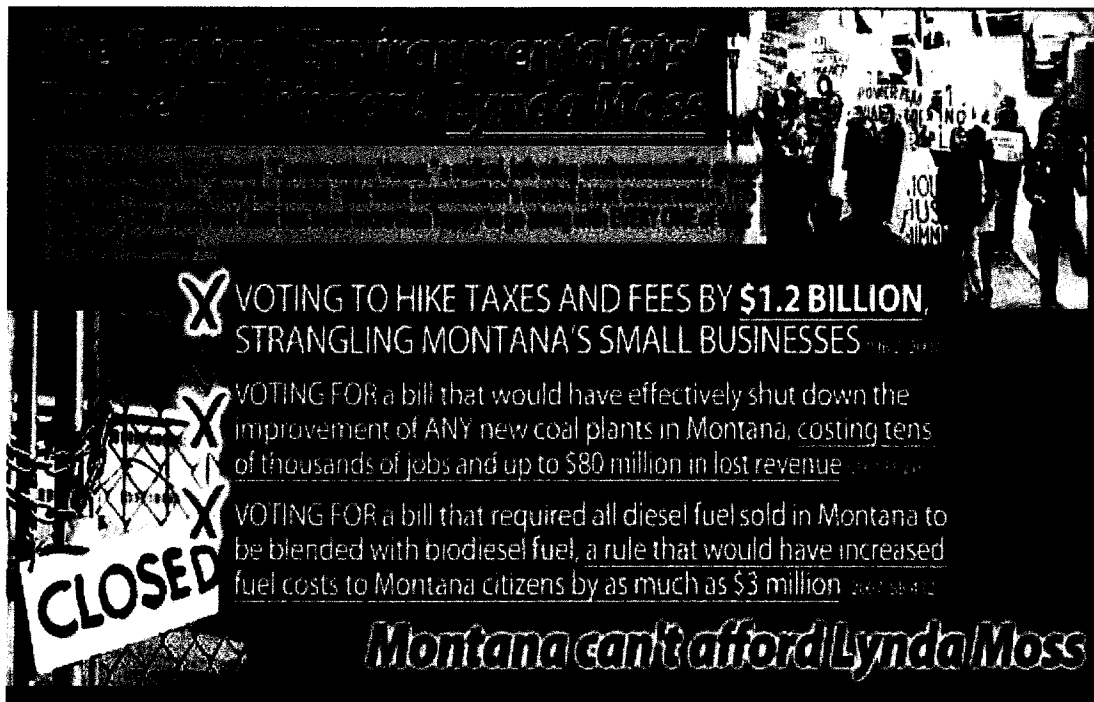


Linda Moss Flyer (Exhibit 10)

Front

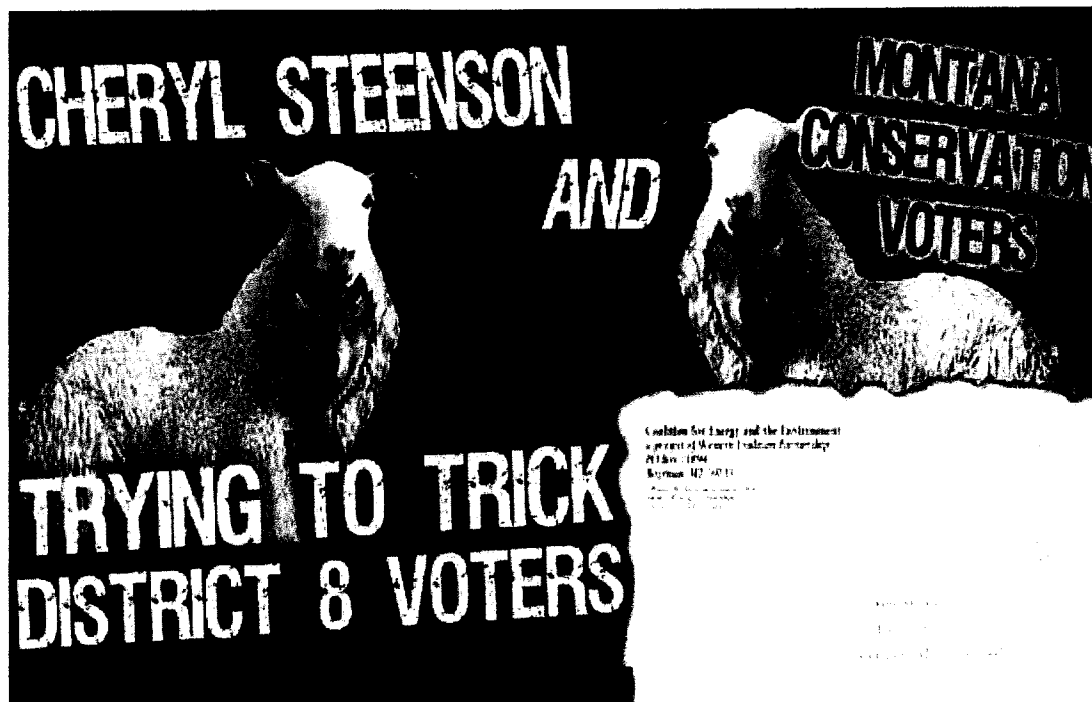


Back



Cheryl Steenson Flyer (Exhibit 11)

Front



Back

DON'T BE FOOLED
by the lies of so-called "Conservation" extremists who are costing Montana taxpayers and hurting our economy

Cheryl Steenson's Plan for Montana?

Real facts, from economists and U.S. Department of Energy on radical "green" proposed legislation

FACT: Montana loses as many as 14,557 jobs. The price of gasoline in Montana goes up 140%

FACT: The average Montana family loses as much as \$5,321.00 in disposable income

FACT: The average Montana family's gas bill goes up as much as 154%. SENIORS suffer the most!

FACT: Low-income Montana families will spend up to 24% of total income on just their energy bill!

FACT: The average Montana family's electric bill goes up as much as 133%



Radical environmentalist groups have a simple agenda - **dismantle our economy by shutting down responsible timber and energy production. Makes you wonder what it is about Steenson that has Washington, D.C.-based radicals here in Montana campaigning for her.**

7. In addition to the Brad Hamlett flyer, a copy of which is reproduced on page 2 (Exhibit 1), another attack mailer directed at Hamlett was distributed around the same time that contained similar images and statements.
8. According to Brian Witt, Christian LeFer forwarded a draft of the Brad Hamlett flyer to him on October 22, 2008. (See Fact 61.)
9. Paul Clark was a candidate for Senate District 7 in 2008, running as a Democrat. (Exhibit 3.) He lost to his opponent in the election, Republican Greg Hinkle.
10. Dennis Getz was a candidate for House District 38 in 2008, running as a Democrat. (Exhibit 4.) He defeated his opponent in the election, Republican Patricia Banister.
11. Cynthia Hiner was a candidate in House District 85 in 2008, running as a Democrat. (Exhibit 5.) She defeated her opponent in the election, Republican BJ Schubert.
12. Michael Holm was a candidate in House District 3 in 2008, running as a Democrat. (Exhibit 6.) He lost to his opponent in the election, Republican Dee Brown.
13. Doc Woerner was a candidate in House District 58 in 2008, running as a Democrat. (Exhibit 7.) He lost to his opponent in the election, Republican Krayton Kerns.
14. Paul Beck was a candidate in House District 59 in 2008, running as a Democrat. (Exhibit 8.) He defeated his opponent in the election, Republican Scott Boggio.
15. Bill McChesney was a candidate in House District 40 in 2008, running as a Democrat. (Exhibit 9.) He defeated his opponent in the election, Republican Jeff Harding.
16. Lynda Moss was a candidate in Senate District 26 in 2008, running as a Democrat. (Exhibit 10.) She defeated her opponent in the election, Republican Max Graham.
17. Cheryl Steenson was a candidate in House District 8 in 2008, running as a Democrat. (Exhibit 11.) She defeated her opponent in the election, Republican Craig Witte.
18. § 13-35-225(3), MCA requires that printed material that references candidate voting records must include certain specified information. Four of the fliers reference candidate voting records. One, against Cynthia Hiner (Exhibit 5.), did not reference the bill, date of vote, or contrasting vote required by the statute. Three (Exhibits 3, 9, and 10) do not reference dates or contrasting votes required by the statute.

19. In a December 16, 2008 letter responding to Graybill's complaints, Dan Reed, then-Executive Director of WTP, stated that WTP is a Colorado non-profit corporation organized and registered with the Internal Revenue Service (IRS) as a 501(c)(4) organization. Reed contends the Hamlett flyer was paid for by CEE, a political action committee (PAC) and that "WTP does not control, fund, or purport to speak for any PAC." Reed states:
- "As a non-partisan, non-profit organization which does not make and has not made expenditures regulated under any of the statutes cited by Mr. Graybill, our organization is not under the jurisdiction of the Office of Political Practices of Montana."
20. In a December 19, 2008 letter responding to Graybill's complaints, Brian Witt, Treasurer of CEE, states that "[w]hen the error pertaining to the 'paid for by' and the name of the treasurer were first spotted a corrected version was mailed to [CPP]." The letter from Witt also states that CEE paid for the Hamlett flyer, and that CEE's income and expenditures are "completely separate" from WTP. The letter states that "[o]ther than tactical and strategic discussions, the groups [WTP and CEE] conduct business as distinct entities."
21. An article published in the Helena Independent Record on May 4, 2008, states that WTP was founded by former Montana legislator John Sinrud and former U.S. Congressman Ron Marlenee. The article notes that WTP has ties with the Montana right-to-work movement, naming Christian LeFer (See Fact 9.) According to the article, Sinrud claimed that WTP is a separate group, and that LeFer was just working as a consultant to WTP. The mission statement on WTP's website states: "Western Tradition Partnership is a 501(c)(4) grassroots lobbying organization dedicated to fighting environmental extremism and promoting responsible development and management of land, water, and natural resources in the Rocky Mountain West and across the United States."
22. According to information on the IRS website, a 501(c) organization is a tax-exempt organization established under section 501(c) of the Internal Revenue Code. A 501(c)(4) organization is typically a "social welfare organization", which the IRS describes as "civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare." A 501(c)(4) organization may further

its purposes through lobbying for passage of legislation. According to the IRS, "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." (26 C.F.R. 1.501(c)(4)-1(a)(2)(ii))

23. Christian LeFer is the Executive Director of Montana Citizens for Right to Work, a corporation registered with the Montana Secretary of State. The mission statement on its website states: "To pass legislation which prohibits forcing workers to pay union dues as a condition of employment."
24. Public records show WTP is registered as a nonprofit corporation in Colorado. WTP's articles of incorporation were filed in Colorado by Scott Shires on March 31, 2008, listing a principal office street address of 12237 East Amherst Circle, Aurora, Colorado. Articles of Amendment for WTP were filed in Colorado by John Thomas Snow on June 26, 2008, listing an address of 1601 Blake Street, Denver, Colorado. WTP is also registered with the Montana Secretary of State as a public benefit corporation, listing its principal office address as 1601 Blake Street, Denver, Colorado.
25. On June 11, 2008, CEE filed a Statement of Organization (Form C-2) with CPP as a political action committee (PAC). Fawn Kirkpatrick, who at the time was a student at Montana State University - Bozeman, was listed as the Treasurer. The purpose of the committee listed on the statement is "Elect pro-candidates for a balanced energy portfolio."
26. According to a notice (Form 8871) filed with the IRS on September 29, 2008, CEE is organized as a 527 political organization. Information on the IRS website provides that a 527 organization is a party, committee, association, fund, or other organization organized and operated primarily for the purpose of accepting contributions or making expenditures to influence the nomination or election of individuals to public office.
27. The form 8871 filed by CEE, under Part IV, "Notice of 527 status," names WTP as a related, affiliated entity, and lists Scott Shires as the "manager" of CEE and as the individual who filled out the form.

28. On May 15, 2009, CEE filed an IRS form 990-EZ tax return. The form, signed by Scott Shires as Treasurer, states that CEE did not receive any contributions and had no expenses for the 2008 tax year.
29. Forms 990-EZ and 990 are tax return forms for organizations exempt from income tax, including 501(c) and 527 organizations.
30. On March 8, 2010, WTP filed an IRS form 990 tax return for the 2008 tax year. In section C at the top of the return, "Western Tradition Partnership" is typed in as the name of the organization, and "Coalition for Energy and the Environment" is handwritten above it. The form 990 lists total contributions for the 2008 tax year of \$665,725, and total expenses of \$662,415.
31. On May 18, 2010, the IRS 527 organization known as Coalition for Energy and Environment renamed itself Western Tradition Partnership. CEE and WTP both have the same federal employment identification number (FEIN).
32. On May 20, 2010, Attorney James Brown of the firm Doney, Crowley, Bloomquist, Payne, Uda, PC of Helena wrote to inform CPP that he was representing WTP in both the complaint against WTP and the complaint against CEE. In response to CPP's subsequent request for clarification, Brown submitted a letter from Donny Ferguson, WTP's "National Director of Media & Public Relations", in which Ferguson states that Brown represents the Coalition for Energy and Environment. Art Wittich (Bozeman attorney and legislative candidate) represents WTP in a lawsuit challenging a Montana campaign statute, Ferguson said. Brown again asserted that he represented WTP in the Graybill complaints and asked that the complaints be consolidated. On June 3, 2010, CPP asked again that Brown clarify who he represents, noting that the letter from Ferguson indicates only that Brown represents CEE, and WTP has denied controlling, funding or speaking "for any PAC." (Fact 5.) Brown's reply included another letter from Ferguson, this one asserting that Brown represents WTP "in the matter of the complaint filed by Benjamin Graybill and in all matters concerning WTP. . ." In a subsequent letter dated August 5, 2010, Brown reiterated the assertion that WTP was not responsible for the CEE flyer at issue. (Fact 2, Exhibit 1.)

33. On or about June 20, 2010, Brown contacted CPP in regard to an unrelated matter and stated that he is serving as general counsel for the Montana Republican Party.
34. The Colorado League of Taxpayers (CLT) was formed as a Colorado nonprofit corporation on July 26, 2006 by Scott Shires. Shires is the same person who filed WTP's articles of incorporation in Colorado (Fact 24), was listed on IRS form 8871 filed by CEE as CEE's "manager" (Fact 27), and signed, as Treasurer, CEE's federal tax return (on form 990 EZ) for the 2008 tax year (Fact 28).
35. An agency decision issued by an administrative law judge for the Colorado office of the Secretary of State on April 24, 2009 found that the CLT violated the reporting requirements of Colorado law by failing to file a report of its electioneering activities in 2008 opposing the election of Steve Carter for the office of Garfield County Commissioner in Colorado. The decision found that CLT had spent, and failed to report, nearly \$2,400 for production and mailing of two flyers opposing Carter's candidacy. The agency decision imposed a penalty of \$7,150 against CLT for the violation.
36. The flyer opposing Steve Carter had the same format and layout, and much of the same text, as the Cynthia Hiner "Making Taxpayers Howl" flyer reproduced in Fact 6 (Exhibit 5). The check used to pay for the Carter flyer listed a Livingston, Montana post office box number. Investigation in the instant complaint determined that the mailing address in Livingston is associated with Christian LeFer and the signature on the check appears to be LeFer's. That Flyer is reduced and reproduced on the following page.